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International Court of Justice

Willey

Schacht
Engl.

H1258 - 0002

PLAIDOYER

HJALMAR SCHACHT

BY

DR. DIX

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Insert I

At this time I request the Court to be permitted to state something beyond the translation of my pleading available to it, which I could not work into this translation because the cause for it came up at a time after the submission of my final pleading for translation, namely the statements of my colleagues Dr. NELTE against the credibility of the witness GISEVIUS. Since I dwell here on the evaluation of a witness, it is the proper time here to answer this.

Insofar as my colleague Dr. NELTE found fault with the objective reliability of the testimony of the witness GISEVIUS in respect to his statements incriminating the defendants KEITEL, GOERING, and so on, I refrain from any statements. May the prosecution take any standpoint it desires. This is not my task.

But now Dr. NELTE has also attacked the subjective credibility of GISEVIUS in the personal moral of this witness and thus also indirectly the reliability of his testimony concerning Dr. SCHACHT. This demands my opinion, and namely one of a very basic nature. Your Honors: it is here where the souls separate. An unbridgeable cleavage opens up between SCHACHT's standpoint and the standpoint of all those who make these thoughts their own with which Dr. NELTE attempts to disqualify morally GISEVIUS, the deceased CANARIS, OSTER, NEBE, etc. I at least owe to my client this, to state the following very clearly and unequivocally:

Patriotism means faithfulness to the fatherland and the people and enmity to the quick against everyone who leads the fatherland and his own people criminally into misery and destruction. Such a leader is any enemy of the fatherland; in his influence on the fatherland he is many time more dangerous than the enemy in war. Every means, and namely

a corsaire un corsaire et demi is just against such a criminal state leadership.

High treason against such a state leadership is true and genuine patriotism and as such highly moral, even during war. Shoever can still entertain the slightest doubt after the findings of this trial andfinally also after the testimony of SPEER about the cynic statement by HITLER in respect to the destruction of the German people, that Adolf HITLERwas the greatest enemy of his people, in short a criminal to this people, for the removal of whom every means would have been just and every, yes every deed would have been patriotic. Worlds separate SCHACHT from everyone in the prisoners' dock who does not recognize this.

In order to cleanse the atmosphere, this must be said. I can save myself after this fundamental clarification to disprove details of the attacks of Dr. NELTE against Dr. GISEVIUS. Insofar as Dr. NELTE misses readiness to act in these resistance groups to shich Dr. SCHACHT belonged, I only point to the many dead who were hanged on 20 July only, where SCHACHT belongs to the very few survivors, and he as well was to be liquidated yet in BLOSSENBURG. I point to the fatal victims, numbering thousands of the political judiciary of the HITLERIAN state. The war of conspiracy against HITLER, and the necessity for cunning; was not less dangerous to life and limb than exposure at the front.

Dr. GISEVIUS has admitted immediately to my loyally cross-examining colleague Dr. KUBUSCHOCK his error, resulting from the prohibition of publications, in the affair of PAPEN's resignation.
I do not have to add anything further.

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Insert II.

As such, he was the subject of ironic belittling by General JODL and my colleage NELTE in the epithets "Frockcoat and drawing-room revolutionary". Now history teaches that the quality of the tailor does not play any role in the case of the revolutionary. And as far as the drawing room is concerned, then the shacks have no revolutionary preference over the palaces. I only call to mind the political drawing-rooms of the great French Revolution or for instance (one of the many) the elegant officers' club of the feudal PREOBRASCHENCK regiment under many a Czar. Even if the Gentlemen are of the opinion that SCHACHT and his accomplices themselves should have done the shooting, then I can only say: Well, if it had only been that easy. SCHACHT would have loved to do the shooting himself; he exclaimed here spontaneously. But it would not go without power which would have pushed on during the confusion coming for certain afterwards and which could bring the attempt to a revolutionary success.

Therefore generals with troops were necessary. I do not wish to repay General JODL with the same coin and therefore do not say "a necessary evil."

The further reproach of the foundation lacking in the working class is contradicted by the social compostion of the revolutionaries of 20 July. As I stated before, all this is irrelevant for the decision of this Tribunal. But my client has a moral right that his defense counsel does not completely ignore this polemic which took place in the spot light of the world public.

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The singularity of SCHACHT's case appears graphically from one glance at the defendants' bench and from the history of his imprisonment and defense. KALTENBRUNNER and SCHACHT sit on the defendants' bench. Whatever the powers of the defendant KALTENBRUNNER may have been, he was in any case Chief of the Main Reich Security Office. Until those May days of 1945, SCHACHT was a prisoner of the Main Reich Security Office in various concentration camps. It makes a rarely grotesque picture to see a jailer-in-chief and a prisoner sharing the same defendants' bench. At the very start of the criminal trial this remarkable picture alone must have given cause for reflection to all those participating in the trial, judges, prosecutors, and defense counsels.

SCHACHT was banished to the concentration camp on the order of HITLER, as has been established here. The charge raised against him was high treason against the Hitler Regime. As the judicial authority the People's Court (Volksgerichtshof), headed by that hanging judge FREISLER, would have convicted him, if his imprisonment had not been exchanged for one by the victorious Allied powers. Ever since the summer of 1944 I held the commission to defend SCHACHT before Adolf Hitler's People's Court; in the summer of 1945 I was asked to conduct his defense before the International Military Tribunal. This, too, is in itself a self-contradictory state of affairs. This, too, forces all those participating in the trial to have misgivings, as far as the person of SCHACHT is concerned. One involuntarily recalls the fate of SENECA, Nero, as a counterpart to Hitler, put SENECA on trial for revolutionary activities. After the

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death of Nero SENECA was charged with complicity in the bad government and atrocities of Nero, and thus in a conspiracy. A certain wry humor is not lacking in the fact that SENECA was then declared a pagan saint by early Christianity as soon as the 4th century. Even if SCHACHT does not indulge in such expectations, this historical precedent nevertheless forces us to remain always conscious of the fact that the sentence to be pronounced by this High Court will also have to defend itself before the judgment seat of history.

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The picture of the Third Reich has been revealed to the Tribunal in a thorough and careful presentation of evidence. It is a picture with a great deal of background. An opportunity was given to depict, within the range of possibility, these backgrounds also. Within the range of possibility! But at the same time this means the limitation of such a thoroughgoing investigation through a judicial presentation of evidence which was, to be sure, thorough, but which nevertheless had to be brought to an end as soon as possible, according to the requirements of the Charter. In order to learn what it was like under HITLER in German countries, there is still enough which has been left to the intuition of the Court. It is not possible and will never be possible to understand HITLER - Germany from a constitutional point of view according to the scientific conceptions and views of people with a legal mind. As a scientific theme: "The Constitution under Adolf HITLER is a "lucus a non locendo". Understand me well! "The constitution!", which means a legal arrangement made by the HITLER State, and not the final pleading of JAHRREISS to illuminate the tyranny of a despot from some legal point of view. Possible, but difficult and therefore not yet published, would be a scientific sociology of the Third Reich. Only a very few Germans who lived in Germany knew the conditions and distributions of power within those circles of people who were apparently or actually called upon to do their share for the formation of a political will. Most of them will be surprised after the unveiling of this picture. How much less possible was it for a foreigner at the time of bringing the indictment, to judge correctly the constitutional, sociological and internal political conditions of HITLER-Germany. But the correct judgment of these things was a prerequisite for an indictment founded correctly from both the factual and the legal point of view. I am of the opinion that the prosecution authorities were thereby confronted with what was for them an insoluble task. I am furthermore of the opinion that the prosecution would have never presented their criminal charges against the defendants under the head of a conspiracy, if they could have understood the distribution of political power in HITLER-Germany in the way, as this is perhaps possible today for an intelligent observerand listener at this trial who is gifted with political intuition, even if this would be difficult enough. A conspiracy within the meaning of the indictment was as a practical matter not possible in the Third Reich of Adolf HITLER.

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In the Third Reich nothing was possible but a conspiracy by the opposition against Adolf HITLER and the regime. As we ascertained here, several of such conspiracies took place. Conspirators act somewhat differently to one other than an assistant acts toward the chief perpetrator. The part to be played by the individual conspirator in the execution of the common plan may vary. Several or even one of the conspirators may hold a leading position within the conspiracy.

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at all times however, cooperation is necessary. Usage of language in itself precludes speaking of a conspiracy if only one commands and all the others are merely executing organs. I am therefore of the opinion that what in this Court has been defined as crime can never be subsumed (subsummiert) according to criminal law as facts in a case of conspiracy. Other legal factors which might come into question are of no interest to me as defense counsel for the defendant SCHACHT, because as an individual person, without connection with deeds of others and consequently only on the basis of his own actions no criminal charge at all can be brought against SCHACHT. SCHACHT personally wanted the permissible and the best. His actions served this desire. To the extent that he erred from a political point of view, he is just as ready to have history judge his deeds. But even the greatest dynamics of international law cannot penalize political error. If it did this, the profession of the statesman and politician would be impossible. World history moves more through mistakes and errors than through correct perceptions. According to Lessing's wise word the recognition of absolute truth is reserved to God. There remains to man only the endeavor, to find truth as the highest possession. Old Axel Oxenstierna already said and probably appropriately, nescis mi fili quanta stultitia mundus regitur. SCHACHT declared here that he was most grossly deceived by Adolf HITLER. Thereby he admitted the erroneous element in certain of his decisions and actions. The prosecution disputes SCHACHT's good faith and imputes to him the dolus

of being Adolf Hitler's agent in finances he deliberately worked for a war of aggression thereby placing him implicitly under the angle of conspiracy before penal law because of all the deeds of cruelty and objecti. which were committed by others during this war. Even the Prosecution was not able to produce direct proof for these claims. They tried it first by means of purportedly documentary evidence in the form of misinterpreted utterances by Schacht, torn from their context. Herein the Prosecution referred to witnesses who could not be made available for examination befor. this Court because in part they were absent, or in part they had died. I recall the affidavits of Messersmith and Fuller and the diary notes of Dodd. Their inadequate value as evidence was thoroughly set forth to the Tribunal in Schacht's examination by me. In the interest of saving time, I do not like to repeat what has been said and surely must still be within the recollection of the court. The Prosecution further attempted to confirm its charges on the basis of Schacht's actions as determined beyond reason of doubt. All these arguments by the Prosecution are erroneous conclusions from alleged indices. I am confining myself to enumeration of the most essential false conclusions. The others follow by necessity either directly therefrom or analogous therewith. Schacht was a foe of the Treaty of Versailles, so says the Prosecution. This he was indeed. The opposition in itself the Prosecution does not hold against him. However, it concludes therefrom that Schacht strove to do away with it by force. The Prosecution says that

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Schacht favored colonial activity. He did indeed. It does not reproach him because of it but it concludes therefrom that he wanted to conquer the colonies by force and so it goes on, Schacht cooperated with Hitler as President of the Reich Bank and Minister Economics, consequently he endorsed Nazi ideology. Schacht was member of the Reich Defense Council, consequently he was in favor of a war of aggression. Schacht helped to finance rearmement during its first phase until early in 1938, consequently he wanted war. Schacht welcomed union with Austria consequently he approved of a policy of violence against that country. Schacht devised the "New Plan" of commercial policy, consequently he wanted to procure raw materials or armament. Schacht was concerned about the possibilities for existence for excess populations in Central Europe, consequently he wanted to attack and conquer foreign countries and to annihilate foreign peoples. Over and over again Schacht warned the world against an anti-German policy of oppression and the moral defamation of Germany, consequently Schacht threatened war. Because no written evidence has been found for Schacht's withdrawal from his official positions as a result of his antagonism to war, the conclusion is that he resigned from these official positions merely because of his rivalry with Goering. The enumeration of erroneous conclusions could be continued as long as one likes. It finds its culmination in the false conclusion: Hitler would never have come to power if it had not been for Schacht; never would Hitler have been able to rearm if Schacht had not helped. This kind of evaluation of evidence would condemn the automobile manufacturer because the driver of the car while drunk ran over a pedestrian.

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In his speeches or writings SCHACHT never advocated force or perhaps even war. It is certain that after Versailles he pointed out again and again the dangers which would result from the moral outlawing and from the economic exclusion of Germany. In this opinion he is in the best international company. It is not necessary for me to cite before this Tribunal the numerous voices, not of Germans but of members of the victor States, beginning soon after the Versailles Treaty, which are in the same tone as the warnings of SCHACHT. The correctness of this confirmed proof will in any case be valid for all time. At no time did SCHACHT, however, recommend other ways or even declare them possible, than those of a peaceful understanding and collaboration. To him as a pronounced economic politician it was clearer than to any other, that a war can never bring a solution, not even when it is won. In all of SCHACHT's statements his pacifist attitude was expressed again and again, in the shortest and the most appropriate manner perhaps, in that statement at the Berlin Congress of the International Chamber of Commerce, when SCHACHT, in the presence of HITLER, GOERING and other heads of the Government called out to the assembly: "Believe me, my friends, the nations wish to live and not to die". This pronounced pacifist attitude of SCHACHT is likewise confirmed by all witnesses and affidavits.

For the few in the world - and I purposely say in the world and not only "in Germany" - who correctly recognized HITLER and his Government from the very beginning, it certainly was an anxiety and a sorrow, at the very

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least a problem, to see a man like SCHACHT placing his services and his great specialist ability at the disposition of Adolf HITLER after he had come to power. The witness GISEVIUS also shared this anxiety, as he has testified here. Later on he convinced himself of SCHACHT's honorable intentions through the latter's belligerent and brave behavior in the years 1938 and 1939. In his interrogation SCHACHT has outlined the reasons which caused him to act in this manner. I need not, and I do not wish to repeat them in the interests of saving time. The evidence has not shown anything which would be contrary to the veracity of this presentation by SCHACHT. To the contrary. I only refer, for example, to the affidavit of Secretary-of-State SCHMID, Exhibit No. 41 of my document book, which contains detailed statements on this subject on page 2, which are in complete agreement with SCHACHT's description. Consideration of the remaining testimonies of witnesses and affidavits as a whole leads to the same result. In order to understand the manner in which SCHACHT acted at that time as well as directly after the seizure of power, and also later, when he had recognized HITLER and his disastrous effect, it is absolutely necessary to gain a clear picture regarding the disastrous sorcery of Adolf HITLER and his system of government. For both are the soil from which SCHACHT's actions arose, and by which alone they can be explained. I realize that one could speak about this for days and that volumes could be written about it, should one wish to exhaust the subject.

However, I also realize that before this Tribunal short references and spotlights are sufficient in order to gain the appreciation of the Tribunal. The disintegrating collapse of imperial Germany in the year 1918 presented the German people with a parliamentary-democratic form of Constitution, which was established superficially and which never became part and parcel of the nation. I claim that all unselfishly directed political thinking must strive for democracy, if by it the protection of justice, tolerance against those of different convictions and liberty, as well as the political shaping of humanity is also understood. These are the highest ideals of all time, which, however in certain constituted forms harbor especial dangers for themselves. If, at the introduction of democracy on the European Continent, reactionary political thinkers like Count Metternich and the like opposed all democratic tendencies, then they did this because they saw only the dangers of democracy, and not its characteristics for the advantage of humanity and its necessity at the time. With regard to these dangers they were unfortunately right. The cleverestnation, which has perhaps ever lived, the Greeks of Antiquity, had already pointed out the danger of the development of democracy through demagogy to tyranny, and probably all philosophical political thinkers from Aristoteles to Thomas Aquinas up to the present time have pointed out the danger of this development. This danger increases in extent if democratic freedom in the formal state-legislative sense does not grow and become inherent in the nation, but becomes more or less a chance gift to a nation.

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"En fait d'histoire il vaut mieux continuer que recommencer", a great French thinker has said. Unfortunately this has caused Germany to become the latest and it is to be hoped the last example of a tyranny established by means of the devilish demagogy of one individual despot. For there is no doubt: The Hitler Government is a despotism of an individual, which can only find comparison in Asia at a time which is far behind us. In order to understand the attitude of every individual toward this Government, not only that of SCHACHT, not only that of every German, but generally that of every person or that of each and every government in the world, which has collaborated with HITLER, and such collaboration, based on confidence on the part of the foreign countries was much greater towards HITLER than towards any government of the so-called interim-Reich or of the so-called State of the Weimar Constitution; it is therefore necessary to analyse the personality of this despot, this political pied-piper, this genial demagogue, who, as SCHACHT here testified in his interrogation with comprehensible excitement, did not only betray him, but also the German people and the whole world. In order to complete this betrayal, HITLER was forced to draw innumerable clever and politically trained personalities besides SCHACHT, even outside the German frontiers, into the aura of his personality. In this he even succeeded with prominent foreigners, even those in leading political positions.

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I shall refrain from citing names and from quotations to prove this point. The fact is generally known to the Tribunal. To mention names at this moment would not be without a certain discomfort as much for the audience as for the speaker, especially in this room and at this trial. In this conjuncture, a defense Counsel can afford to be considerate when it is not damaging to the cause he defends. It is immaterial, however, when the fact quoted by the defense counsel in his argument is already known to the Tribunal, by reason of the latter's general knowledge and experience. How was this ascendency of Hitler both in Germany and abroad possible? of course Faust, too, was under the ascendency of Mephisto. In Germany, every circumstance exposed at the examination of evidence as to the situation then prevalent in Germany ran counter to this ascendency, and the same applies to Schacht. The total collapse of the parliamentary party system and the resulting necessity, then already felt by the existing Government, of having to govern by emergency decrees enacted without parliamentary participation, and thus establishing a dictatorship of the ministerial bureaucracy as a fore runner of the Hitler dictatorship, elicited from nearly every quarter a clamour for a stronger leadership. The economic crisis and employment opened the ears of the masses as misery always does, to demagogic whispers. The complete lethargy and inactivity of the existing middle and left parties moreover instilled critical and intelligent observers, which Schacht assuredly was, with the moral deadness and yearning to welcome impetuous political "dynamics" and activity. Insofar as one so sharp witted and perspicacious

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as SCHACHT already discovered faults and dark sides at the outset, he could believe, and SCHACHT did believe, that he could, precisely by active penetration into the movement or by cooperation with leading State departments, which he did combat, quickly and easily these dark sides, attendant upon every revolutionary movement." "When the eagle soars, vermin settle upon its wings" replied the late Minister of Justice GUERTNER, quoting from Konrad Ferdinand MEYER's "Pescara", when I remarked to him about these dark sides, after the seizure of power. These considerations are in themselves reasonable and plausible. The fact that they contained a political error, bearing even upon SCHACHT's person, does not deprive them of their good faith and honest inspiration. We do not, however, wish to forget that we have heard here, during the proceedings, a message from the American Consul General MESSERSMITH, dating from 1933, in which he joyfully hails the report that decent and sensible people are now joining the Party, as it is hoped thereby that this would do away with radicalism. I refer to the document submitted here by the Prosecution: document No. 1184 L 198, a report by the American Consul General MESSERSMITH to the Secretary of State in Washington.

> "Since the election on March 5th, some of the more important thinking people in various parts of Germany have allied themselves with the National-Socialist movement, in the hope of tempering its radicalism by their action within rather than without the Party. "

But what MESSERSMITH very reasonably says of ordinary Party members of that time,

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naturally applies also, with the necessary adjustments, to the man who placed his collaboration in a leading government post at Hitler's service. The motive given by Schacht for his decision at the time to accept the post of President of the Reichsbank and later of Minister of National Economy is therefore intrinsically credible and has no immoral or criminal implication. Schacht has always been a man of action. He only lacked at the outset the intuition to recognize the personalities of Hitler and some of his associates for what they were. But that is no punishable act, neither does it indicate a criminal intention. This intuition has been generally lacking both within and without the German frontiers. Intuition is an attribute of fortune and an irrational gift. Every man has his limitations, even the most intelligent. Schacht is assuredly very intelligent, but with him reason has prevailed to the detriment of intuition. In conclusion, this circumstance can only be fully understood when these mysterious forces are taken into account, which affect universal events and of which Wallenstein says: "The earth belongs to the evil Spirit, not to the good" and goes on to speak of the "Powers of Darkness which under cover of darkness, perform evil deeds." Adolf Hitler was a prominent example of these powers of darkness and the effects he created were all the worse as he lacked any Satanic grandeur. He remained a half educated, completely material little bourgeois who, moreover, had no sense of justice whatever. Defendant Frank says truly of him that he hated jurists because the jurist appeared to him as a disturbingfactor for his power, Thus, he could

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promise anything to anybody and not keep his promise because a promise for him meant only a technical instrument of power, not a legal bond. Neither was the pernicious affect of HIMMLER and BORMANN detected by SCHACHT at the time, or indeed by anybody. Nevertheless, all those crimes that are now inflicted in this Court, matured within this trio, for, to HIMMLER as well, politics were identical with murder, and his purely biological view of human society represented it to him as a herd of cattle and never as a social and ethical community. A personality like Adolf HITLER and its effect upon men, including such intelligent men as SCHACHT, can thus only be correctly judged by following the prophetic vision of the poet, as I have endevoured to do, and penetrating into spheres of knowledge generally closed to the reasoning power of men. The demoniac has undoubtedly been incarnated in Adolf HITLER for the hurt of Germany and the world, and, to sum up, I can, here – and this is necessary for the comprehension of the conduct of SCHACHT as well as of all those others who deliberately andin all purity of heart, offered their services to HITLER – quote a passage from our Goethe, which says everything in few words and discloses the deepest mysteries. Here lies the key to the comprehension of all those followers of HITLER. May I quote from "Poetry and Truth" Part 4, Book 20, as follows:

> "Although the Demoniac can manifest itself in everything material and immaterial and indeed be most obviously apparent in the beasts, it most usually

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stands in the most wonderful association with man, and constitutes a power disturbing, where not opposed, to the world order. For the phenomena caused thereby, there are innumerable names. For all philosophies and religions have tried, both prosaically and poetically, to solve this riddle and finally to dismiss the matter, which they are, in the future, at liberty to do. But the demoniac assumes its most dreadful from when it appears in an overwhelming measure in a particular person. During my lifetime I have had occasion to observe several such persons either closely or from afar. They were not always the best of persons, either spiritually or by their talents, and they were seldom recommendable by their goodness of heart. A tremendous force, however, emanates from them, and they exercise an incredible power over every creature, even over the elements, and who can tell how far such an influence will extend. No coalition of honest forces can prevail against them; it is in vain that the better part of humanity attempts to put them in disrepute as aberrants or as impostors. Humanity as a whole is attracted by them. They seldom or never find contemporary equals, and nothing short of the Universe itself, against which they initiated the fight, can prevail against them; and those observations can indeed inspire that curious though terrible phrase: " Nemo contra Deum, nisi Deus ipse".

I think I have demonstrated that the fact of having served

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HITLER does not criminally inculpate SCHACHT in any way, and that it can by no means be concluded from this fact that he had been acquiescent, at the time, to the criminal deeds of HITLER and his regime. Indeed, he did not think them possible. Neither was it a case of dolus eventualis, on the contrary: insofar as the violent character of the regime disturbed him, he believed he could, by his appointment to an important post, contribute to the abolition and prevention of those consequences he disapproved, and promote, in his operative sphere, Germany's honorable and peaceful ascension.

Even if it turned out that he not only served HITLER after the seizure of power but had helped him to seize power, no single reproach could be made against him. This latter charge is therefore void as evidence of criminal behaviour or of criminal intention. However, there is no need for this argumentation, since actually SCHACHT did not help HITLER to power. HITLER was in power when SCHACHT began to work for him.

HITLER had victory in his pocket when the July elections of the Reichstag in 1932 brought him no less than 230 mandates. These represented about 40% of the total votes. Such an election result for a party had not been seen for decades. Thus, the immediate political future was established in a Government headed by HITLER, thanks to the very rules of the German democratic constitution and of every democratic constitution. Every other method was fraught with the danger of civil war.

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It was natural that Schacht who at that time honestly believed in Hitler's political mission did not wish to take this road. It was likewise natural that he should become an active link in the chain when he believed that by this attitude he would be able to prevent harmful radicalism from materializing in the economic political domain. A wise French statesman says:

"We are faced at some time or other and in some way or other by the task of creating advantages or preventing abuses; for this reason a patriotic man, according to my conception, can and must serve any government set up by his country". In his opinion Schacht was serving his country and not Hitler, if he was serving Hitler at that time. This opinion may have been as erroneous as possible and subsequently it has revealed itself completely false as far as Hitler was concerned; Schacht can in no case be criminally charged for acting as he did at that time, neither indirectly nor circumstantially. We must also not forget that the Hitler of 1933 not only seemed to be different from the Hitler of 1938 or even of 1941, but actually was different. At his interrogation Schacht already referred to the transformation caused by the venom of worship by the masses. The transformation of such personalities is a psycholigical law. History reveals this in Nero, Constantine the Great and many others. In the case of Hitler, there exist many unsuspected witnesses for the truth of this fact, unsuspected in this sense that a purpose or an intention to violate the law, to raise terror to a principle and to surprise mankind by a war of aggression, can never be imputed to them. I am going to quote

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a few of them. I could multiply the quotations a hundred fold. In 1934 Lord R. THERMERE wrote an article in the Daily Mail, entitled: "Adolf Hitler from close by". I quote only a few sentences: "The most prominent character in the world of to-day is Adolf Hitler"; "Hitler directly belongs to the series of those great leaders of mankind who seldom appear more than once in two or three centuries it is delightful to see that Hitler's speech has considerably brightened his popularity in England". I quote from Summer Welles' book " Time for Decision" published in New York in 1944: "Economic circles in each of the Western European democracies and of the New World welcomed Hitlerism." And it is only right, when Great Britain's lost ambassador in Berlin even during the war states in page 25 of his book: " It would be highly unjust not be recognize that a great number of those who joined Hitler and worked for him and his Nazi regime were honest idealists" , and further on he makes the interesting remark: " It is possible Hitler was an idealist himself in the beginning". The Government of Great Britain would never have concluded a naval treaty with Hitler-Germany already in April 1935, and therewith have contributed in a calculated way to a modification of the Versailles Treaty, if she had not had entire confidence in Hitler and his Government. After all, the same holds good for all international treaties concluded by Hitler, including the treaty with Russia concluded already in August 1939. And it is to-day deeply affecting

when an ethically prominent man as the late British Prime Minister Chamberlain declared in a speech not later than January 1939, (namely at a time when Schacht had long since been treading the obscure paths of conspiracy), and in spite of the events of the year 1938: that he had gained the definite impression from Hitler's previous speech that it was not the speech of a man who was making preparations to plunge Europe into another war. I do not doubt that these words were not spoken as a matter of tactics but reflected the speakers' true opinion. Such examples could be quoted in great number. Would one for the years 1933 to 1939 deny a German the right to come to the same opinion about Hitler in good faith? This is also not inconsistent with the fact that Schacht entered office as a Minister of Economic Affairs only after 30 June 1934. Only in retrospect can one fully realize the monstrosity of these events. In June 1934 we were still in the midst of a revolutionary movement. History can probably ascertain similar occurrences in each such revolution. I need not prove this individually, neither should I like to do so here for the reasons previously discussed. The events of 30 June were just as little or even less reason for Schacht to turn away from Hitler with disgust, as they were not enough to prevent the governments in the world from not only continuing diplomatic relations with Hitler in full confidence, but also rendering him great honours and allowing him to score important successes in foreign policy, especially after 1934.

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If, SCHACHT however cannot be criminally charged with the fact that he put himself at the disposal of HITLER's government, it is completely superfluous indeed it would be of minor importance, to intend by means of long statements to excuse individual acts such as the petition addressed to the Reich President in 1932 or his letter to Hitler in the same year. For someone who knows life the explanation for them comes quite naturally out of this fundamental attitude of SCHACHT. Should this attitude prove to be unobjectionable as far as criminality and the technique of handling evidence is concerned, then no such documents can be adduced against SCHACHT. All that matters is the principle. The same holds true for SCHACHT's participation in the so-called meeting of industrialists. On this subject I should like to remark by way of clarification (see Schnitzler affidavit), that SCHACHT neither conducted this meeting nor administered. these funds exclusively for the National Socialist Party.

Now a witness has given a verdict of good conduct for this very period of SCHACHT's attitude towards the seizure and establishment of power: "SCHACHT has been an untrustworthy and shifty fellow, SCHACHT betrayed the cause of democracy at that time, he-the witness- , therefore, refused in 1943 to join a government that should overthrow HITLER with SCHACHT's participation".

He was former minister Severing who, according to his own statement, left his ministerial seat and room on 20 July 1932 when the President of the Police of Berlin accompanied by two police officers called on him demanding his removal from office with the assertion that they had been authorized to do so by the Reich President.

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Severing left the field, as he said himself, to avoid bloodshed. In spite of the great respect which I feel towards Severing's clean political character, I am forced to my regret to deny him any right to give a good name to statesmen who unlike him and his government coalition would not remain in lethargic passivity. Severing and his political friends do not, indeed, bear responsibility before a Judge, but before history for allowing Hitler to seize power, a disproportionately greater responsibility than Hjalmar Schacht because of their indecision and, finally, their lack of political ideas. This responsibility will be all the greater, as the witness claims to have already recognized at that time that Hitler's accession to power meant war. Even if one believes him to possess this correct political intuition, his and his political friends' responsibility will be all the greater in view of their passivity then and later, and on the other hand disproportionately greater than that of Hjalmar Schacht. Our German workers, however, are really no more cowardly than the Dutch. Our hearts rejoiced to hear a witness give evidence here on oath about the manly courage of Dutch workers, who dared to strike under the very bayonets of the invading army. The justifiable adherence of Severing and his political friends to the German working class might perhap have induced them hot to watch the dissolution of the trade unions with such blunt passivity, as was the case in 1933 when their natural leaders, such as Severing and his colleagues should have attempted a little

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and exposed themselves. Finally, the KAPP revolt in 1923 was also overcome by the general strike of the workmen. The HITLER Regime was not so strong in 1933 that the truth of the poet's word addressed to the workers did not need to be feared: " All wheels stand still when it is your strong arm's will". The National Socialist Government at that time was quite well-informed about this and had corresponding apprehensions. This was demonstrated also by GOERING's testimony on 13 October 1945, minutes of which were cited and handed over by Professor KEMPNER on 15 January 1946. GOERING said:" You must consider that at that time the activity of the communists was extraordinarily strong and that our new Government was not very secure as such". But even this strong arm just mentioned required a guidance which remained denied to the working class. Men like SEVERING were called to it. In all justice, they will have to account for their passivity, not before the judge in a criminal court, but before history. I do not presume to make a final judgement. I restrict myself to revealing this problem and to attributing with complete human respect a strong and painful measure of self-righteousness to the witness SEVERING if he feels himself called upon to accuse others when examining the question who from the view point of history is guilty of the seizure and strengthening of the power of Nazism, namely if in contrast to SCHACHT he foresaw intuitevely the later evolution of HITLER, instead of submitting himself in humility to the judgment of history, with reference to his assuredly decent disposition and pure volition.

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We wish to keep alsways before our eyes in order to maintain the purity of historical truth, that at the beginning of Nazism – with the exception of an intervention from abroad – there were two power groups who could perhaps have liberated Germany: the army and the working class, both of course under corresponding guidance. I must be more detailed on this point, because such a detrimental remark by such a blameless and distinguished man as Severing, brings with it the danger of unjust deductions regarding my client. It would have been agreeable to me if I could have been spared this explanation of Severing's incriminating testimony. Severing has further raised the reproach of political oppurtunism against SCHACHT. In politics, the boundary between opportunism and statesmanlike efficacious dealing is very fluid. Before the conduct of SCHACHT in 1932 and 1933 is appraised as that of an opportunist, his past should be looked into. Since 1923 this past was lived in complete publicity. It was partly the object of these proceedings, it is partly juridical notoriety. This past speaks rather for the fact that SCHACHT does what he judges to be right, not only with great lack of consideration, but also with great courage. He proved his courage as conspirator against HITLER, as is necessarly proved by analyzing this activity as conspirator, and as GISELIUS expressly described him here. But let us now go back to 1923. At that time he stabilized the Mark against all

parties interested in inflation; in 1924 he blocked credits against all hoarders of foreign currency; in 1927 he deprived the exchange speculators of the credit basis for exchange gamble. He fought from 1925 to 1929 against the debt and the expenditure policy of the municipalities and drew by this on himself the enmity of all mayors. He signed the Young- Plan in 1929 and thus defied the opposition of the heavy industry's circles and in pursuit of this nature, he fought since 1934 against the errors and abuses of the Nazi-Jdeology and has never carried out a desire or an order for himself which ran contrary to his conscience or his sense of justice. Every statesman must make certain concessions in a fanatical time. Certain preachers of ethics of which there are many today -- who demand hardness of steel for the protection of principles, should not forget that steel has two qualities, not only the firmness, but also the pliancy.

If I wind up now the evaluation of Schacht's conduct up to about 1935 and enter henceforth the period from 1935 to 1937, I may emphasize once more that, for the sake of saving time, I deliberately do not repeat the arguments which were fully brought to the knowledge of the Tribunal during the examination, thus the non-participation of Schacht in the legislation, which led to the abrogation of the rights of the people, as this took place before his entry into the Cabinet. The deciding event for the stabilization of Hitler's power, the amalgamation of offices of the President of the Reich and of the Chancellor of the Reich and on Hitler's personality, were also beyond his assistance and responsibility.

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By this decree the Army took their oath to Hitler. The Chancellor of the Reich had not only authority over the police as before, but also authority over the Army. It is not my task to investigate who has to bear the political responsibility and historic guilt for this law; in any case it is not SCHACHT, Similarly it was before his entering upon uffice that the basic anti Jewish laws were passed. He was quite surprised by the later Nuernberg laws. The decree dealing with the exclusion of Jews from the German economic life dated 12 November 1938 and the order for the confiscation of Jewish possessions of 3 December 1938 were issued after he had returned from the post of Minister of Economy and thus without his active collaboration. The same applies to the decree excluding Jews from the Reichs Labor Service, which did not weigh heavily on them. The law concerning the death penalty for concealment of Foreign currency, the so-called law of betrayal of the people, was not directed against the Jews but solely against heavy industry and high finance, it was not made by Schacht but by the Minister of Finance. Schacht did not want such laws to be the cause of rupture, because he thought he had more important tasks to perform. This does not seem to be of such great importance, because Schacht had so let himself in for unpleasantness by his advocacy of the Jews in the Jewish question, by his public speeches and his exposés to Hitler, that it would be unjust to disqualify him politically or morally, not to mention juridically for this reason. I remember particulary the Reichsbank speech after the anti Jewish pogroms in November 1938, the speech at Koenigsberg, the exposés of 1935 and so forth.

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In the Third Reich Schacht was considered the most courageous and active protector of the Jews. I only refer to the letter of the Frankfurt business man Merton which was submitted to the court and to the illustrating statement of the witness HEYLER. According to the latter, Himmler, when HEYLER reproached him for the events of November 1938, replied that it had been ultimately the fault of the economic administration that things have gone so far. From a man like Herr Schacht one could not require anything more than that he exercised a constant restraining influence in the Jewish question and set himself against the will of the Party.

On my questioning him in reply, Justice Jackson defined this specific charge of the prosecution as follows: Schacht is not being prosecuted for anti-Semitism, but for activities, which stand in causal connection with the atrocities committed against the Jews within the framework of the war of planned aggression. From this it results that a denial of the guilt of a war of aggression leads with compelling logic to the denial of any guilt of the atrocities which were committed against the Jews during the war. Justice Jackson has made some phases of the legislative treatment of the Jews during Schacht's ministry the subject of his cross-examination. The questions asked and answered herein are irrelevant according to the Charter and the previously mentioned authentic interpretation of this part of the prosecution by Justice Jackson.

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The anti-semitic legislation of the Third Reich and the personal attitude toward it of an individual defendant is, according to the Charter, relevant in these proceedings only so far as they are connected with other crimes, which were committed according to the Charter, as for example the conspiracy to wage war, the exterminations, and so forth. According to the Charter they cannot be an offense in themselves, nor even one against humanity. Only those defendants are punishable for their deeds who can be proved to have participated in the planning of a war of aggression and its unhuman consequences against the Jews. A prequisite for their conviction, however, is that they recoquized and desired this goal and its result.

There is no purely objective responsibility for the final result of an action (Erfolgshaftung) in criminal law. According to the Charter, that man is punishable who desired war and also the inhuman actions connected with it, but the incriminating activity must always have occurred within the scope of carrying out such a plan. This purely legal view in itself excludes the conviction of Schacht because of atrocities against the Jews.

A discrepancy between the prosecution, especially between the statements of Justice Jackson and myself, must likewise be clarified at this point, otherwise we will be talking at cross puposes. During the testimony Justice Jackson has repeatedly pointed out that the defendant is not being charged with anti-Semitism as uch, that he is not being charged with his opposition to the Versailles Treaty, that he is not being charged with his ideas and statements on the so-called Lebensraum problem, and, thus the food problem of the Centraleuropean nations, that he is not being charged with his colonial aspirations, but that on the contrary he is being charged with all this only to the extent that it has served, with his knowledge and desire, for the preparation of a war of aggression. With this objection Justice Jackson tried to cut short certain questions and discussions.

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This would have been justified and I could now omit such arguments, if the Prosecution would not take with one hand all it gives with the other. Because with this other hand, the course of argumentation, everything, namely his alleged antisemitism etc. is used as indirect proof and evidence that Schacht had prepared and desired this war of aggression. The prosecution does not count all that as a criminal fact in itself, but as indirect testimony, as evidence. Therefore in its valuation as evidence I must take these problems into consideration. The Jewish question, has, I think, been dealt with. In the problem, of vital space (Lebensraum) I can only refer, in order to save time, to what Schacht, during his interrogation, has stated for justification of his stements and activities. The colonial problem was the subject of Cross examination by Justice Jackson in as much as he tried to prove by his representations and question that colonial activity by Germany was impossible without world domination or militarily prepared command of the seas at least. The further development of this idea would result in the defendant Schacht being charged, with the fact that his struggle for Colonies logically implied the planning of a war of aggression. This is a wrong inference. I think t Justice Jackson's conception of Colonial Policy is too imperialistic a one. Who ever desires colonies for his country without dominating the world or a least the sea, starts out with colonial aspirations under the supposition of a lasting state of peace vis à vis the stronger seapowers.

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He must believe in peace with those powers. Germany had also possessed Colonies from 1884 until the First World War . Her Merchant Navy tonnage carried on the necessary traffic with these colonies. Her pre war Merchant Navy tonnage would have also been sufficient. Air communications, in reply to Justice JACKSONs question, would not have been needed. Nothing supports the presumption that by his desire for colonies, SCHACHT would have aimed at a removal of foreign naval supremacy by war. Concerning his general conduct one can hardly take him for so foolish. France and Holland likewise posses colonies, but certainly do not control the sea routes. This repres tation of the prosecution is indeterminative. The Tribunal moreover knowes well, that during the years before this was nearly all the statesmen of the victorious powers have proved sympathetic to these colonial aspirations of Germany as shown in many public speeches.

I would now refer to the subject of rearmament, i.e. to the activity of SCHACHT in his capacity as President of the Reichsbank and Reich Minister of Economics until 1937. i.e. until a date when he had changed from a loyal servant of Adolf Hitler to a traitor against him, and when he chose the dark ways of tricks and dissimulation coupled with preparetives for murder.

The prosecution applies the violation of the Versailles treaty, the Locarno Pact and of other treaties as indirect proof, as evidence of his aggressiondolus. This first involves the question whether in general any objective treaty -

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violations took place and whethers, in the affirmative case, these treatyviolations must be looked upon as indicatives of an aggressiondolus in the person of a member of the Reich Government i.e. also in the person of SCHACHT. It is unpossible and also unnecessary to exhaust within the framework of this pleading the problem. whether and how far treatyviolations were committed. Only a short remark may serve to prove at least the problematical solution of this question. This again is important for subjectiv estimation. There are no external treaties in the domain of civil jurisdiction and still less in the domaine of International Law. The clausula rebus sic stantibus plays a much more important role in the domaine of international law, i.e. in the political iintercourse between nations, than in the lawful intercourse between indivuals. One has to be very careful not to adapt the principles of the low level of civil law to the high and wide domaine of the international jurisdiction. The International law has its own dynamics. The highly political intercourse between nations is subject to other juridical aspects than the commercial and personal intercourse between individuals. The most striking proof of the correctness of this thesis is the juridical argumentation of the bill of indictment, in so far as it deals with the sentence "nulla poena sine lege poenale" and demands the individual punishment of the leading statesmen of an aggressor nation instead of the issue of sanctions. Particularly the man who affirms the conception of the prosecution in this respect, thus acknowledges the dynamics of International Law and the fact, that International Law develops in accordance with its own laws.

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History has taught that treaties according to International Law do not come to an end by a formal repeal but die in the course of the evolution of facts. They die out necessarily by themselves. In individual instances one might be of a different opinion whether this is the case. But it does not alter the accuracy of this established fact. The remilitarisation of the Rhineland and also the introduction of General conscription, the extent of rearmement, the voluntary "Anschluss" of Austria to Germany approved of and aimed at by Schacht, certainly are offenses against the meaning and text of the above mentioned pacts, particularly the Versailles Treaty. If such violations are only answered by formal protestations, whilst very friendly relations continue, yes even honour is shown to the offending nation, if agreements are concluded which alter the principal perception of such a treaty, as for instance the Naval Pact with Great Britain, one can very well advocate the opinion that by such facts a treaty slowly becomes obsolete and extinct, that such a subjective point of view at least finds it justification. I beg to consider that the principal presupposition for the conclusion of an Armament Pact, as for instance the Naval Pact with Great Britain, is the recognition of the military sovereignty of both nations. The latter being denied to Germany was one of the main points of view of the Versailles Treaty

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I will not speak here about the justice or injustice of this treaty. I know the Court's wish or rather prohibition in regard to this matter, and of course I shall bow to it. But I must and I may speak about the legal possibility and therefore the innocence, criminally speaking, of SCHACHT's subjective opinions on the question of treaty violation. Even if therefore one wished to defend the point of view that the said treaties have not become obsolete, one cannot, as far at least as its honesty is concerned, doubt the subjective justification of a contrary opinion. But if this is answered in the affirmative, these treaty violations are no longer any proof of the criminal intention of a war of aggression. But that is the only point in question. For the violation of treaties as such is not yet considered by the Charter as a punishable act. Here also SCHACHT can justify his honest belief by reference to similar ways of considering the question by foreign statesmen, in the case of which the suspicion of a German will for aggression is therefore as a matter of course logically excluded from the very beginning. Here again I must limit myself to a few instances, as a complete enumeration would exceed the time limits of this plea. The first of the violations of the Versailles Treaty is supposedly the re-introduction of general military service. The British Foreign Minister Sir John SIMON, with a stateman's far-sighted objectivity, as reported by the press and by wireless-broadcasts, and therefore universally known, and consequently of value as legal evidence, replied to these measures as follows:

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"There is no doubt that it had been expected that upon the forced disarmament of Germany, or concerted reduction of the armaments of other big nations would follow". These remarks contained a confirmation of the juridical point of view I developed a while ago, in spite of the blaming of HITLER's action that followed them. The same applies to the fact that the visit of Sir John SIMON and Anthony EDEN to Berlin took place eight days after this so-called treaty violation, namely on March 24th 1935 It would not have taken place, if this measure of HITLER's had been consider abroad as a militarily aggressive one. As you also know, I may only make a short reference to the history of the discussion of this question at the Council of the League of Nations, as it is well-known. Should SCHACHT, as a German and a German Minister, judge it in a different manner to that of the foreign government?

A second violation of the treaty was the occupation of the Rhineland, also in March 1935. This action was not a breach only of the treaty of Versailles, but also of the Locarno Pact, that is of an undoubtedly voluntarily contracted treaty. Two days later Mr. BALDWIN stated in the House of Commons, in a speech made public and therefore of value as legal evidence, that, while the way Germany acted could not be excused, there was no reason to assume that this action contained a menace of hostilities. Was the German and German Minister SCHACHT to take a more sceptical attitude in regard to the aggressive significance of the act than foreign countries? And in particular when he was forced to register the fact which

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also belongs to history and is universally known, that 10 days after this breach of treaty the Locarno Powers, apart from Germany, submitted to the Council of the League of Nations a Memorandum proposing the reduction of the number of German troops in the Rhineland to 35.000 men, and wishing only to avoid the strengthening of the SA and SS in the Rhineland, and likewise the erection of fortifications and aerodromes. Should this Memorandum not be interpreted as a ratification of an alleged breach of the treaty? A third breach of the treaty was the fortification of Helgoland, which was hardly noticed by the contracting parties and called forth from Eden, in a historical public speech to the House of Commons on July 29th,1936, merely the remark that it was not considered appropriate to increase the difficulties of the debate by individual questions like the foregoing. Was the German Minister SCHACHT to take up another and sharper attitude? And what about the terrorist annexation of Austria in March 1938, when moreover SCHACHT was no longer Reich Minister for Economy? Had foreigh countries gathered from this action the conviction that HITLER was preparing a war of aggression, they would not have renounced the use of force. Should the German Minister SCHACHT hold a different opinion and act accordingly? He already held it and was already eagerly at work with WITZLEBEN and others to eliminate Adolf HITLER and his regime by means of a revolt. The efforts of these patriotic conspirators were however frustrated, according to the unequivocal testimony of witness GISEVIUS, because HITLER was

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able to register one succes after another in enternal politics.

I will only recall the unequivocal evidence of Gisevius regarding the effects of the Munich Agreement on the striking power of the opposition group working with Schacht. I will recall the evidence of Gisevius regarding the warnings and hints which in this connection were sent beyond the German frontiers to responsible personalities of foreign countries. Is it fair to require from the German Minister Schacht a more cutical attitude in respect to these political developments than that taken by foreign countries, the interests of which had been injured? He had, as we know from Gisevius, and also from Vocke and all the affidavits submitted, that he had a far clearer opinion after 1937 in which year he began treading the dark ways of a conspirator. I will recall his first contacts with the then General von Kluge I could maltiply examples such as those just mentioned. I do not criticize this attitude of foreign countries, it is not my business, quite apart from the fact that I have a complete understanding for this responsibly conscious pacifist attitude resulting therefrom. It is, however, my duty to point out that no war-like intention can be imputed to Schacht or account of his opinions and attitude, when the same opinions and attitude can be identified in the inpired foreign countries. If foreign countries could entertain the hope of further maintaining friendly relations with Hitler, the same right must be conceded to Schacht, as long as he claims the same right. He does not claim it for himself at least after the Fritsch crisis of 1938.

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From then onwards he had, as foreign countries had not, clearly perceived the danger. This, according to the evidence of GISEVIUS, is undeniable, and he personally did all he could at the greatest risk of liberty and life, to maintain peace by attempting to overthrow HITLER. That all these revolts before the war and after outbreak of war were unsuccessfull cannot, according to all the evidence submitted be imputed to him as his fault. The responsibility for the failure of this German resistance movement does not lie with itself, but somewhere else within and without the German frontiers. I shall revert to this later. Remains therefore the fact of re-armament as such. Here also I can refer to the statements SCHACHT made for his justification during his examination. This was exhaustive and a repetition would be superfluous. It is therefore also superfluous to enter into an academic discussion as to whether SCHACHT's views were right, that is to say whether it is right that a certain amount of military force sufficient for defensive purposes was necessary for any country, and particularly for Germany, and whether his opinion was right, that the non-fulfilment of the obligation to disarm by the parties to the Versailles treaty justified the re-armament of Germany. The sole question in point is whether these opinions and motives of SCHACHT were honest or whether he pursued secret aggressive intentions under over of these defensive armaments. But nothing can be confirmed against the honesty of these opinions, of course it can be contended whether the proverb "si vis pacem para bellum" has an immediate validity or whether

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objectively any strong rearmament does not carry an inherent danger of war, since good armies with competent officers naturally strive for possibilities of active service. Of course the thesis can be defended that moral strength is stronger than any armed strength. The cohesion of the British Empire and the world-wide influence of the Vatican's foreign politics could here be cited as proof. All these questions carry a certain relativity in themselves. At any rate one thing is certain, and it is that in all large countries of the world the warning is always and always renewed that one must be militarily strong to preserve peace. Nations whose individualism and love of liberty rejected universal defensive service and a strong standing army now do the contrary and believe honestly to serve peace thereby. Let us take as an example a nation whose love of liberty nobody in the world, even the most mistrustful can question viz. SWITZERLAND. Even this peace-loving nation has always taken pride in maintaining the defense capacity of its people just in order to protect its freedom and independance in a peaceful manner. One may academically call this idea of discouraging foreign aggression by the maintenance of a sufficiently strong defensive army imperialistic. It is at any rate honestly entertained by peaceful and liberty-loving nations, and perhaps serves the cause of peace more effectively than many so-called anti-military or pacifist doctrines. This reasonable point of view has really nothing to do with militarism.

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He who still today recognises it as justified for great and small nations may not contest the honesty of their representation by SCHACHT in the years 1935 to 1938. I have no more to say about this. I also need not give a wearisome enumeration of figures and make technical statements, that this part of rearmament which SCHACHT first financed with 9 milliard and then reluctantly with a further 3 milliard, was by no means sufficient for a war of aggression, not even for an effective defense of the German frontiers. The answers that the witnesses Keitel, Bodenschatz, Milch, General Thomas, Kesselring etc. have made to this in their depositions and affidavits, are available and have been submitted or have been officially brought to the knowledge of the Tribunal. In this respect they are unanimous that Germany even at the outbreak of war, i.e. one and a half years later, was not armed sufficiently for an offensive war; and that therefore it was not only a crime against humanity but also against his own people, confided to his leadership, if Hitler led this people in August 1939 into a war of aggression. I therefor also consider it superfluous to make longer statements, if Blomberg's statement is correct, that Schacht was aware of the progress of rearmament or the statement of Schacht and Vockes that this was not the case, I admit without further discussion, the bona fides of Blomberg's statement. But as he had more to do with the technical side of rearmament than the Reichsbank, personal experience shows, that the memory

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of SCHACHT and VOCKES is more reliable on this point than BLOMBERG's to whom this report to the Reichsbank was a matter of secondary importance for his department. For the Reichsbank, the desire to be informed about the technical progress of the armament and not only about the financial expenditures was a very important thing. One remembers such facts more reliably than unimportant, secondary matters. In any case it is established that until the budget-year 1937/38 only 21 milliard were spent for armament, of which 12 milliard were financed by credits of the Reichsbank and that according to JODL's statement of June 5th, on April 1st 1938 only 27 to 28 division were ready, whereas in 1939, however, there were already 73 to 75 divisions. It needs no expert to show that volume of expenditures and armament on April 1st was entirely insufficient for a war of aggression. HITLER indeed was also of the same opinion when, in his memorandum of August 1936, which has been submitted to the court, and which was handed over to SPEER in 1944, he pointed out, along with many disapproving remarks about SCHACHT's economic leadership, that four precious years had gone by, that one had had time enough in these four years to determine what we could not do and that he was hereby ordering, that the German army would have to be ready for action in four years, and so in the course of the year 1940. I recall to the memory of the court, that after SCHACHT's withdrawal as president of the Reichsbank 31½ milliard were spent on armament during the two budget-years 1938/39 and 1939/40. The issuing and expenditure of money on armament therefore went on without SCHACHT, too, and, indeed, to an even more considerable extent. At that time, SCHACHT had written to BLOMBERG, that he couldn't produce money out of the air.

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He exercised a constant pressure on BLOMBERG along this line. I now refer to his letter to BLOMBERG of December 21st 1935 which has been submitted to the court. He exercised a restraining influence by means of explanatory lectures to officers of the war ministry and of the Armed Forces Academy. He refused the railway loan of 1936 presented by the Minister of Communications, which was indirectly in the interest of armament and stopped the credits of the Reichsbank as early as the beginning of 1937 by making a compromise on the final 3 milliard. He refused the credit which the Reich Finance Minister requested from him in December 1938.

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He created an automatic brake for the armament expenditures through the Mefo bills, which from the technically financial point of view was a rather bold measures, but still legally tenable. These served first of all to finance the armament expenditures, but restricted further armament expenditures after their expiration on April 1st 1939, because the Reich was bound to honor them. SCHACHT's foresight proved true. The increase in employment brought such a rise in the states revenues, that it would not have been difficult to liquidate the Mefo bills at their expiration after 5 years. KEITEL's statement has proved that during the budget year beginning April 1st 1938, five milliard marks more were spent for armament than during the preceding year, although after April 1st 1938 the Reichsbank credits had completely ceased. Half of these 5 billions would have sufficed to honor the Mefo bills which matured during the budget year beginning April 1st 1939. This money would have been saved from further armament. But this was exactly what SCHACHT intended. From the beginning he had limited the validity of the Mefo bills to five years; he stopped the credit assistance of the Reichsbank on April 1st 1939, in order to limit the armament. It was impossible for SCHACHT to foresee that HITLER would simply break a strict credit obligation and not pay the bills. These facts in themselves show that his attempts to resign could have had no other reason than opposition to any further armament and the refusal to accept responsibility for this. In this sense, the assertion of the prosecution that he wanted

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to evade responsibility, is completely correct.

Nothing shows that any other motives which necessarily appear from the facts just mentioned caused him to make this endeavor to relinguish his duties. If the prosecution says that the reason was his autogonism to GOERING, this is also right insofar as SCHACHT was an opponent of the Four Year Plan, of which GOERING was the chief. That the reason was a rivalry of power is a pure supposition, an interpretation of the actual events, which justifies the quotation:"Interpret to your heart's desire, because if you do not interpret, you are just quoting someone else." The Reichsbank's memo of November 1938 which led to the dismissal of SCHACHT and most of his collaborators, including VOCKE, is also unequivocaly and forcibly opposed to armament. It naturally had to contain a justification which was derived from the departmental jurisdiction of the Reichsbank. Its aim was generally known. Hence HITLER's remark: "This is mutinery". The memoire ends with the demand for the capital and loan market, as well as the management of taxation, to be controlled by the Reichsbank. Compliance with this demand would have taken away from HITLER every possibility of raising money for further armament. This demand was, therefore, unacceptable to HITLER. SCHACHT and his colleagues knew this. Accordingly, they deliberately sought a break by this step. SCHACHT now bore no responsibility. From now on SCHACHT could devote himself exclusively to the plans for a coup d'etat by the conspiratorial group to which he belonged.

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he belonged. He became a traitor to Hitler. By remaining minister without portfolio, he hoped to learn about events for the aims of his conspiratorial group than if he resigned altogether. I shall return to this point later.

The fact of the armament, as such, therefore proves absolutely nothing for the assertion of the prozecution, that Schacht deliberately contributed to the preparation of war of aggression.

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Such a conclusion is no less grotesque, as I must constantly repeat, than the comparison already often, cited, between the automoblie manufacture and the taxi driver.

Simultaneous economic aramament, however, belongs of necessity to armament in the modern sense. On the German side, this was already recognized for the first time at the beginning of the first World War, and even

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by two very important German Jews, namely the founder of the Hamburg-America Line, Albert BALLIN, and the great German industrialist RATHENAU. It is this same RATHENAU, who made that wonderful speech on peace during the Conference at GEN A, surrounded by the wild applause of those very Powers which had opposed his country but four years perviously as enemies, and as the German Foreign Minister, who fell as a sacrifice in the beginning of the twenties to an anti-Semitic outrage. I may presumably suppose the personality of Albert BALLIN to be known to the Court. Both men recognized already at the start of the first World War the error of a discontinued economic mobilization. RATHENAU then organized the so-called, War Raw Materials Department of the War Ministry. The first Plenipotentiary for War Economy, since this is all he was, therefore idealogically a pacificist. Since this time, there will at least be no mobilization plan by any nation, which does not allow purely military armament to be accompanied by a corresponding economic preparation for war. Therefore the creation of a General Plenipotentiary for War Economy, even if he had never become effective, which, as the evidence demonstrated most convincingly, he never did become, but remained a dummy ... was never a proof of the intention to wage a war of aggression, this post being necessary for any armament for defense. This office is also necessary for all defensive armament. The same applies to the institution of the Reich Defense Council, the Reich Defense Committee, etc. As such they are the same harmless self-explanatory factors. Only their misuse for the purpose of a

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war of aggression would be incriminating. For this, however, the dolus of SCHACHT has not been established. I therefore refrain from evaluating the details in this field. Finally and at last the Prosecution sees something incriminating in the so-called maintenance of secrecy regarding certain mobilization measures and mobilization arrangements, as for example the maintenance of secrecy concerning the second Reich Defense Law. In this case also a natural worldly way of thinking relieves these findings of any incriminating character. All nations are accustomed to carry out mobilization and armament measures in "secret". In thinking this over more closely and from closer observation this practice can be recognized as quite superfluous routine matter. Only drafts and technical details can be really kept secret. The fact of rearmament as such can never be kept secret. The same applies to the existence of a large body which is to serve the purpose of this rearmament. Either this becomes known when it starts functioning, or, like the ominous Defense Council it remains hidden and secret only because it does not function. In the memoirs of a Tsarist officer regarding his experiences in the Russo-Japanese war I found the humorous description: "If I, as a member of the General Staff, wished an incident to become known, I had it classified as "secret" and my wish was fulfilled. If I had the wish, so difficult to carry out, to keep something secret, I unobtrusively sent it unstated and at times my wish was fulfilled". One must not quibble in a vacuum, but, if one wishes to seek the truth, one must consider the

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basis of experience of the hard foundation of facts. In this way the fact of the military activation of Germany after the seizure of power by HITLER and the subsequent rearmament was never a secret to the world. The main proceedings have brought much evidence to this effect. We know the report of Consul-General Messersmith, we know his sworn testimony of 3' August 1945, submitted by the Prosecution under No. P.S. 2385, according to which the armament program - he speaks of a giant armament program immediately after the seizure of power - and the rapid development of the air program had been apparent to everybody; It had been impossible to move in the streets of Berlin or in any other city of importance in Germany without seeing pilots or aviators in training, and who expressly states on page 8 of this testimony, that this giant German rearmament-program was never a secret and was publicly announced in the spring of 1935; I recall amongst much other evidence the remark of Ambassador Dodd, where he wished to point out to SCHACHT, that the German Government had bought high-grade war planes from American airplane - manufacutrers alone for one million dollars and that they had been paid for in gold. If Ambassador Dodd has perhaps made a mistake in this detail, yet all this still proves that German rearmament the extent of which was surely overestimated even at that time, must have been at the very best an open secret. Therefore it is not even necessary to refer

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mutual visits of the general chief of staffs, to which von MILCH and BODENSCHATZ testified the visits of the British Intelligence Service Courtney, the permanent presence of military attachés of nearly all the countries in Berlin, to recognize that the so-called secret re-armament was a public one, which only safeguarded a few technical secrets like every rearmament in every State. The outside world knew the existence of this rearmament, and held it as endurable in any case for the preservation of world peace longer than SCHACHT did. It is not my privilege and I have not the remotest intention to criticize the attitude of the outside world. Each part played in life has its own laws of tact, even the part played by the defendant and his defense counsel. Their task is the defense and not the blame and the attack connected with it. I want to take precautions explicitly against a misunderstanding that I intend to appear as an accuser or critic in any way. I only present all this from the viewpoint that the indirect evidence submitted by the prosecution is not valid.

The prosecution argues furthermore with the fact that SCHACHT was a member of the Reich Cabinet, and this from the time of his dismissal in January 1938 as Minister of Economy, at least as Minister without portfolio until January 1943. The prosecution makes the Reich Cabinet responsible for the belligerent invasions of HITLER, namely as criminally responsible. This argumentation has an attractively convincing power on somebody who reckons with the normal concept of a Reich Cabinet. This effect disappears once it has been ascertained that the so-called Reich Cabinet was not such

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in the ugual sense of a constitutional State. Penal judicial establishments must not, however, be based on outward appearance and form, on a fiction, but only on actually established conditions. This makes it necessary to penetrate sociologically the nature of the HITLER Regime, and to examine if a member of the Reich Cabinet, hence of the Reich Government, as such in this his capacity has to bear the same criminal responsibility as if he was in another normal State structure, be it now a democratic republic or a democratic monarchy or a constitutional monarchy ar an absolutistic, but nevertheless rightfully in the State established monarchy or some other state legal structure which bears the character of a somehow lawful legislative State. We can therefore not omit to fathom the actual sociological structure of the HITLER Regime. We have heard excellent and profound explanationsin this connection from the mouth of Professor JAHRREIS. Here, too, I want to avoid repetitions and only to quote the following in abbreviated form:

I want to say first of all, in order to avoid again the danger of a misunderstanding, that, if I speak here about the HITLER Regime, I am doing this without any connection with the persons sitting in the defendants' docks, naturally with the exception of SCHACHT. For the latter, I am doing this in the negative sense, that he did not belong to the Regime as such, in spite of the fact that he was a member of the Reich Government and president of the Reich Bank.

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I leave the question completely open as to whether either of the other defendants should be considered a member or supporter of the regime. That question is subject only to the judgement of the Tribunal and its valuation by the respective competentdefense counsel.

Already at the beginning of my argument I indicated that even for someone who lived in Germany during the Hitler regime it is difficult between the seeming and the apperent distribution of power and the actual influences of this power; but that this is bound to surpass the ability to judge of people who lived outside of Germany, and only be made possible through findings obtained the presentation of evidence before this Tribunal. We have established here that the Reich Cabinet which Hitler termed a club of defeatitists was convened for the last time in 1938-and that only for the purpose of receiving a communication from Hitler; and that it met for the lasttime, for deliberation and to make decisions in 1937 and that Hitler intentionally withheld all matters of political importance from the Reich Cabinet, as is also brought out by the so-called Hossbach Minutes of 10 November 1937. During this meeting the Fuehrer called the attention of those present (Schacht, of course, was not present and did not learn about the Hossbach Minutes until he came here) that the subject matter of the meeting was of such great importance that it would result in full Cabinet meetings in other countries, but that just because of its great significance he had decided

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not do discuss the matter within the circle of the Reich Cabinet. After that, and certainly after at least 1937, the members of the Reich Cabinet can no longer be considered the architects and supporters of the political aspirations of the Reich. The same holds true for the members of the Reich Defense Commission, which in itself was nothing but a bureaucratic routine affair. Because of this Hitler also in the spring of 1939, explicitly excluded the Reich Defense Commission from further war preparations in the following words: "Preparation takes place on the basis of peace legislation." Despotism and tyranny had reached their purest form in 1938 It is a characteristic specific of the Fascist as well as the National-Socialist regime to concentrate formation of the political will in the head of the Party, who, with the help of this Party, subjugates and masters this Party and State. Justice Jackson too recognizes this when he stated on 28 February 1946 that the apex of power existed in a power group outside of the State and/outside the Constitution, To speak in the case of such a regime of a responsible Reich Government and of free State citizens, who through various organizations could exert influence on the formation of political will, would mean proceeding from entirely wrong hypotheses. Only inconceivable greatness always gains irresponsible influence on the head of State and Party in such regimes. The formation of the political will can be recognized in its crystallized form only in the head of the State himself; near to him and behind him it becomes opaque. It is another characteristic of such a regime - and again

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this belongs to the chapter of its inner untruthfulness – that behing the facade of seemingly absolute harmony and union, several power groups fight each other. Hitler not only dondoned such contrasts, he even encouraged them and in part used them as a basis for his power. If any of the defendants spoke here of the unity of the German people during the war in contrast with the First World War, I, on the contrary wish to stress that hardly at any time during its history was the German nation so torn internally as it was during the Third Reich. The apparent unity was merely the stillness of a churchyard enforced through terror. The conflicts between the individual high functionaries which we have here reflect the inner strife-torn condition of the German nation, hidden artificially only through the terror wielded by the Gestapo. To give only a few examples, we were confronted here with the conflicts between Himmler and Frank, between Himmler and Keitel, between Sauckel and Seldte, between Schellenberg and Canaris, between Bormann and Lammers, between SA and SS, between Wehrmacht and SS, between SD and Justice, between Ribbentrop and Neurath, and so forth. The list could be continued as desired. Even ideologically the Party in itself was divided into strongly pronounced contrasts which became clear already at the very beginning of the presentation of evidence from Goering's testimony. These contrasts were fundamental, and they were not bridged by Hitler but rather deepended. They were the keyboard of his source of power on which he performed.

The Ministers were not responsible governing persons such as any other State where law is the foundation:

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they were nothing but employees with specialized training who had to obey orders. If a specialist such as SCHACHT did not wish to submit to this, it resulted in conflict and resignation from his department, as happened in his case. Ministers could not in the long run take full responsibility for their department, because they were not exclusively competent for it. A Minister, in accordance with Constitutional Law must, first of all also have access to the Chief of State, and he must have the right to report at any time. He must be in a position to reject imterference and influences by a third irresponsible Party.
None of these characteristics typical for a Minister aplly to the so-called Ministers of Adolf Hitler. SCHACHT was surprised by the Four-Year Plan. Similarly, the Minister of Justice was surprised by such extremely important laws as the Nuremberg Decree. The Minister was not in a position to appoint his staff independently. The appointment of every civil service employee needed the consent of the Party Chancellery. Meddling and influence by all possible agencies and persons of the various Chancelleries - Chancellery of the Fuehrer, Party Chancellery etc. - asserted themselves. They,however, were Agencies placed above the Ministries and they could not be controlled. Special deputies governed through the departments, Ministers - yes, even the Chief of the Reich Chancellery as we heard from Lammers - had to wait for months for an audience, while for Messrs. Bormann and Himmler it was a coming and going to and from Hitler all the time. The Anticamera and Camarilla, and indispensable accessory of all absolutism when it comes to the personal responsibility of the individual, as well

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as regards the circles of which they are composed, have at all times been difficult to comprehend. They are not the irresponsible influences exerted over HITLER and affecting him. JODL described to us here, how HITLER's spontaneous actions having the most serious consequences, could be traced back to influences of that type, through entirely obscure third persons, due to mere accidants, conversations at a tea party, etc. For the objective facts this bears out what I already mentioned in the beginning. The very fact of the existence of such conditions eliminates even the possibility of the planning of a crime, such as a war of aggression, within a clearly defined circle of persons or, for that matter, within the so-called Reich government. But where there is no planning possible, there is also no plot possible, no conspiracy, of which the most striking characteristic is the common planning though with various roles. Let us assume the most widely conceived interpretation of the public fact of the conspiracy. I am following Justice JACKSON. He who takes part in a counterfeiters' plot is guilty of conspiracy, even though he may have written only a letter or acted as bearer of the letter. He who participates in a plot for robbing a bank is guilty of murder if, in the wake of the planning, a third party in the group of planners committed murder. At all times, however, the prerequisite is a body of persons capable of executing a common plan. Such a thing was not possible for Adolf HITLER's Ministers; it was not possible at all under HITLER. From this it follows that no plotters could participate in the crime of having forced upon his own people and the world a war of aggression except those who served HITLER as assistants.

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The power situation of the third Reich as depicted thus permits in thesi only the assumption that there was punishable accomplicity or punishable assistance but on the other hand no punishable group offense such as conspiracy. Whether such accomplicity or such punishable aid in the crime of a war of aggression, undoubtedly committed by HITLER exists for the individual defendants personally can only be investigated and decided in every case individually. To investigate this is my task only for the person of SCHACHT. A collective crime such as conspiracy ("conspiracy",) on the basis of the actual conditions already established is however excluded as inconceivable and unrealizable. But even if this were not the case, the subjective aspect of the deed is completely lacking in the case of SCHACHT. Even when the objective facts of a conspiracy exist within a circle in the prisoners' dock, and even with the most liberal interpretation of the concept of conspiracy, the conspirator must accept a plan of conspiracy and the aim for conspiracy in his volition, at least in the form of the dolus eventualis. The severity of the existence of a conspiracy derives most significance from comparison with a pirate ship. In the abstract every crew member of the pirate ship, even in an subordinate position, is an outlaw. But someone who did not even know that he was on a pirate ship, but believed himself to be on a peaceful merchant vessel, is not guilty of piracy. He is also innocent if after realizing the pirate character of the ship, he has done everything to prevent the execution of piracy as well as to leave the pirate ship.

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SCHACHT did both. As far as the latter is concerned, scientific theory on conspiracy also recognizes that he is not guilty who has withdrawn from the conspiracy by a positive act before attainment of the goal of the conspiracy, even in case he cooperated previously in the preparation of the plan for conspiracy as was not done by SCHACHT.

In this connection, I also consider in my favor Mr. Justice JACKSON's answer when I put up for discussion within the compass SCHACHT's interrogation whether the persecution of the Jews is also charged to SCHACHT. Mr. Justice JACKSON affirmed this in case SCHACHT had helped prepare the war of aggressi before he withdrew from this plan for aggression and its group of conspirator and went over unreservedly to the opposition group, that is to the conspiracy against HITLER. This desertion would then be the positive act mentioned by me above where by a person at first participating in a conspiracy could separate himself from it. But in the person of SCHACHT it is not a question at all of this legal problem because the evidence has shown that he never desired to participate in the preparation for a war of aggression. As already explained, this accusation of the subjective fact of the conspiracy has been proved neither by direct nor by indirect evidence. For the events until the year 1938, I can point to the statements made previously. From 1938 on at the latest, it has been proved that from this time on SCHACHT waged the most conceivably severe battle against any possibility of war in such a form that he attempted to overthrow the carrier of this danger of war, the carrier of the will for aggression and thereby the regime.

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It is here completely irrelevant and is beside the point whether or not these putsch attempts which continued during the war at shorter or longer intervals, were suitable to achieve for Germany a better conclusion of the peace.

This is absolutely meaningless for the evaluation as a crime of SCHACHT's course of action. It is beyond doubt that, according to human reckoning to a successful putsch before the outbreak of war would have prevented the outbreak of war, and that a successful putsch after the outbreak of war would at least have shortened the duration of the war. Therefore, such sceptical considerations about the political value of these putsch attempts do not render any proof against the seriousness of putsch plans and intentions. These are all that counts. For they prove first of all that one who has been pursuing them since 1938 and, (if one thinks of the attempt with KLUGE,) even since 1937, could impossibly have had warlike intentions. One does not try to overthrow a regime, because it involves danger of war, if one has oneself worked for the war previously. One does this only if by all ones actions, even that of financing armament, one wished to foster peace. For this reason, these proven repeated putsch attempts on the part of SCHACHT do not perhaps have the legal significance of a so-called active repentance for a previously shown criminal behaviour, but they are ex post a proof that he cannot be accused even before 1938 of consciously working for war, because the latter is logically and psychologically incompatible with SCHACHT's activity of conspiracy against HITLER.

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These putsches thus prove the credibility of SCHACHT in respect to his representation of the reasons and intentions which caused him to enter actively into the HITLER government and to finance an armament to the extent of the financial aid he granted, namely to the amount of 12 billions. They prove ex post the purely defensive character of this financing of armament, they prove the credibility of SCHACHT's contention of producing besides this defensive effect tactically a limitation of armament. But if one believes this description of SCHACHT, then one cannot speak of SCHACHT's cooperation in instigating a war of aggression, at least in its subjective aspect. This credibility is also proved by another circumstance. SCHACHT has contradicted the testimony of GISEVIUS and my questioning along the same line that he had admired HITLER at the beginning and had unreservedly considered him an ingenious statesman. He described this in his interrogation as an erroneous assumption, he said that he had recognized from the beginning many a weakness of HITLER, especially his sketchy education, and only hoped to be in a position to control the disadvantages and dangers resulting from them. By this, purely objectively speaking, SCHACHT hereby made his defense more difficult. He is wise enough to have recognized this. Thus what he consciously lost hereby for his defense in the technique of evidence and surrendered, he is gaining in respect to his credibility upon objective recognition of evidence based on psychological experience. For he deserves increased credibility who serves the truth by contradiction even when

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the suggested untruth or the halftruth is more advantageous to him technically and tactically by way of evidence. There should not exist any doubt about the participation of SCHACHT as a leader in the activities of the various conspiracies about which GISEVIUS testified precisely on the basis of the credible testimony of GISEVIUS. But if Mr. Justice JACKSON presented in the cross examination to SCHACHT photographs and films which superficially document a close connection with HITLER and his paladins, then this could only have happened in order to put doubt on the seriousness of his active opposition to HITLER. I therefore must deal briefly with this photographic argument anyhow. Mr. Justice JACKSON has related this accusation with another one in quoting speeches which show superficially even during the putsch period a great devotion toward Adolf HITLER . This accusation is on the same level. I believe that this argument can stand up neither before the experience of life nor before the observation of history. History teaches us that conspirators in particular especially if they belong to the closer circle of dignitaries of the threatened head of state, show for purposes of camouflage a special devotion. Nor has it ever been observed that such people show their intentions to the treatened victim in a contradictory loyalty. One could here accumulate examples from history. There is a really effective German drama by a certain NEUMANN which concerns itself with the murder of Czar PAUL by his first minister Count PALEN. The Czar trusts

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to the very end the devotion of Count P..LEN which is shown ostentatiously even at the time when the latter is already sharpening the murder knife. And in the historical documents left behind, there is an instruction by Count P..LEN to the Russian Ambassador in Berlin, very shortly before the attempt, in which Count P..LEN cannot do enough to speak about "Notre auguste Empereur". Significantly, this drama bears the title "The Patriot". Thus there is a higher patriotism than purely formal loyalty of the servant of the nation. It approaches the psychological truth much more if one would utilize a presumptive devotion assumed for the sake of appearances and assurances of loyalty during this period, more in favor of the objective credibility of the description of SCH..CHT than vice versa. As a conspirator, he had to camouflage himself especial well; to a certain degree, this had to be done by practically everyone who lived under this régime in Germany. As far as these photographs are now concerned, then these are easily a compulsory consequence of ev social and thereby also socially representative membership in a body (GREMIUM) so that for better or for worse one becomes a victim of the camera with the members of it. When I am once a member of a government, then I cannot avoid being photographed with these people on the occasion of their meetings. Thus such pictures result as SCH..CHT between LEY and STREICHER. Viewing such pictures ex post, these pictures are not a joy to the observer; certainly not to SCH..CHT either. But they do not prove anything. In a natural evaluation of a normal, average experience of life I consider these pictures without any value as evidence either pro or contra.

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The foreign countries, too, had through their prominent representatives social intercourse with Adolf HITLER's governments, and this not only through their diplomatic corps. I wish to assure you that the defense is in a position to produce much more grotestque pictures, which do not look as natural as SCHACHT being photographed together with men who were his high standing colleagues in the third Reich. To produce such pictures might not be a very tactful move of the defense. But a defense counsel must also take upon himself the odium of indiscretion, should it be necessary in order to investigate the truth in all seriousness. I do not believe that I have to do it in this case, because the irrelevance and insignificance of such presentation of evidence through pictures of representative events seems to be obvious.

The only incriminating point pressed by the prosecution which is left for me to argue now appears to be SCHACHT, after his retirement as Minister of Economy and still more after his retirement as President of the Reichsbank in January 1939, remained Minister without portfolio until 1943. SCHACHT declared that this had been stipulated by HITLER as a condition for his release from the Ministry of Economy. HITLER's signature, as head of the State, was necessary for his dismissal. Had SCHACHT refused to remain as Minister without portfolio, he would surely have been arrested sooner or later as politically suspect, and thus been deprived of all means of action against HITLER. The witness GISEVIUS has testified

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as to the deliberations at that time between him and SCHACHT concerning the continuation of SCHACHT as Minister without portfolio. In these deliberationsit was justly of importance, that SCHACHT could be of more use to the group of conspiratÅrs as a scout or a patrol, if he remained in this position, to outward appearances at least, within the Reich Government. Even as Minister without portfolio, SCHACHT remained exposed to great danger, as demonstrated by his and GISEVIUS' declarations,and as becones obvious from (HLENDORFF's statement that SCHACHT was already in 1937 on the black list of the State Police. How much HITLER feared SCHACHT is proved by his later remarks to SPEER which have been discussed here, particularly his remarks about SCHACHT after the attempted assassination on 20 July. I would also remind once more of the memorandum of HITLER of 1936, which he gave to SPEER in 1944 and which says that he saw in SCHACHT a saboteur of his rearmanent plans. It has been declared and proved by LAMMERS, that SCHACHT tried later on to get rid even of this nominal position LAMMERS and SCHACHT have proved furthermore that this position was without any substantial importance. Therefore my nicknaming it " Fancy Dress Major" (Charakternajor), that means a major without a battalion and command authority, a sham-major.SCHACHT could not get rid of the position without scandal, the same as with the position of Reich Bank President. SCHACHT therefore had to manoevre in such a way that he would be thrown out. He succeeded in this, as I explained, as Reich Bank President, through the well-known memorandum of the Board of Directors of the Reich Bank and the refusal of credits

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by the Reich Bank in November 1938, contained therein. As fas as his position of Minister without portfolio was concerned, he succeeded through his defeatist letter of November 1942. In the meantime he made use of the time for the attempted "coup d'etat" in autumn 1938 and for the various other attempted "coups d'etat" until 20 July 1944, the last one landing him in a concentration camp. A criminal reproach can on no account be made him in his position as Minister without portfolio. For his proved ~~conspirational~~ activity against HITLER during all this time, eliminates of hand and logically the supposition that he had furthered HITLER's warplans and war strategy during this time. There remains only space, and this also only in the vacuum of abstraction, for a political reproach against the SCHACHT of the years 1933-1937. But this, too, is compensated by the extraordinarily courageous attitude of SCHACHT after this period. In order to obtain the just appreciation for fact, may I remind you of the interesting statement of GISEVIUS, that he, who had looked with a certain scepticism upon SCHACHT's original attitude, not in a criminal but political sense, had then been completely reconciled with SCHACHT by the extraordinary courage which SCHACHT displayed as opponent and conspirator against HITLER since 1938. I mean therefore that the fact of SCHACHT remaining as Minister without portfolio does not incriminate him directly or indirectly not according to penal law anyhow, right from the start, but also not morally, if one takes into consideration his behaviour as a whole, his motives and the accompanying circumstances and conditions.

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If the prosecution now finally argues, on the basis of the text of the afore mentioned memorandum of the Board of Directors of the Reich Bank, an opposition to war is not evident from the Memorandum, but only technical currency reflections, then I have only to refer in this respect to my previous statements and the testimony of von VÖCKE. And the presentation of facts by SCHACHT himself would not even be necessary to refute this argumentation. VÖCKE declared quite unequivocally in his capacity as closest collaborator, that SCHACHT wished to limit and sabotage rearmament from the moment when he recognized its dimensions as a danger of war. The sworn affidavits of HUELSE and the sworn affidavits of all the collaborators of SCHACHT in the Reich Ministry of Economy combine with this testimony of VÖCKE in that sense. I need not quote than individually. They are known to the Tribunal. The Tribunal does not need the commentary of a defense counsel. They speak for themselves. If the Presecution now finally argues concerning the text of the Memorandum, which, it is true, actually only deals with financial problems, then I cannot omit the remark, that such an argumentation moves again in a vacuum , and does not take the experiences of history and the general experiences of life into consideration. Naturally - I have said it already - the Board of Directors of the Reich Bank could only operate with arguments which came under their department, particularly so if one had to deal with a HITLER. One beats the bag but one really means the donkey.

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If the directorate of the Reichsbank and with it its President SCHACHT had not made public its true purpose in this memorandum, namely to avert the danger of war and to combat HITLER's will of aggression, then it would have removed the effect of a specialist departmental influence from itself. HITLER very well understood the purpose of this memorandum, when he shouted after reading it: "That is mutiny." With this Adolf HITLER recognized what can be said alone of SCHACHT as conspirator. He was never a mutineer and conspirator against world peace, but, so far as he was a conspirator and mutineer, he was this only against Adolf HITLER and his government.

In summing up it must therefore be said:

After the July elections in 1932 it was certain that HITLER would and was bound to seize power. Previously to this SCHACHT had expressively warned the foreign countries of this development, and therefore not contributed to it. After the seizure of power only two roads were open to him, as to every German: he either had to estrange himself or he had to enter the movement actively. The decision at these crossroads was a purely political one without any criminal aspect. Just as we respect the reasons which caused the foreign countries to collaborate with HITLER much more intensively and Pro-Germanically than with the previous democratic governments of Germany, so we must recognize the good faith of all those Germans who believed themselves to be able to serve the country and humanity better because of the greater possibilities of exerting their influence within the movement, therefore either within the party or within the apparatus of officialdom, than by

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grumblingly standing aside. To serve Hitler as minister and President of the Reichsbank was a political decision, about whose political correctness one can now ex post facto argue, which however, lacked any criminal character. SCHACHT has always remained loyal to the motivating reason for his decision, namely to combat any radicalism from an influential position. Nowhere in the world did a warning-signal appear for him. He only saw that the world trusted Hitler much longer than he himself, and permitted Adolf Hitler honors and foreign-political successes, which hampered SCHACHT's work, when it had already for a long time been directed at removing Adolf Hitler and his government. He led this struggle against Adolf Hitler and his government with a courage and a consequence, which must make it appear as a pure miracle that it was only after 20 July 1944 that the fate of the concentration camp and the danger of losing his head either through the People's Tribunal or through an act of the SS reached him. He is sufficiently clever and self-critical to refrain from escaping the realization that, from the purely political consideration, the picture of his character will waver in history, or at least in the nearest future, confused by the favor and hatred of the parties. He humbly resigns himself to the judgment of history, even then, if one historian or another will label his political line as incorrect. With the pride of a good conscience he resigns himself to the judgment of this High Tribunal. He stands before his judges with clean hands. He also stands before this Tribunal with the confidence, as he has already expressed in a letter which he

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addressed to this Tribunal before the beginning of the proceedings, and in which he expresses that he would regard with gratitude the exposing before this Tribunal and before the whole world publicity, of his actions and activity and its motivating reasons. He stands before this Tribunal with confidence because he knows that the favor and hatred of the parties will not have any effect in this Tribunal. In all self-recognition of the relativity of all political actions in such difficult times, he is still selfcognizant and full of confidence with regard to the criminal charges which have been raised against him, and this with justification. Because, no matter who would have to be found guilty of being criminally responsible for this war and the atrocities and inhumane acts committed in it, SCHACHT, according to the evidence which has been kept here with minute exactness, can shout - the words to every culprit, which Wilhelm Tell shouts to the Kaiser-assassin Parricida: "I raise my clean hands to HEAVEN, and curse you and your deed." I therefore request the findings to established to the effect, that SCHACHT is not guilty of the accusation which has been raised against him and that he therefore is to be acquitted.